IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.902 OF 2005
IN
NOTICE OF MOTION NO.2565 OF 2005
IN
L.C. SUIT NO.2653 OF 2005

Jayashree Subhash Parekh — Appellant
vs.
1.M/s.Apsara Coldrink House & ors. — Respondents

Mr.S.N.Vaishnava i/b.Mr.N.N.Vaishnava & Co. for the appellant.

Mr.A.R.Pandey for the respondent no.1

CORAM : B.H. MARLAPALLE,J.

DATED : 29th September 2005

P.C.

Heard the learned counsel for the appellant-plaintiff. By the impugned order dated 12.7.2005 the learned Judge of the trial Court held that there was no case made out for grant of ad-interim relief i.e. preventing the defendant no.1 from carrying further alterations/additions in the suit premises viz. shop nos.. 1 and 2 located on the ground floor. The trial Court noted that consent terms were placed before it and the plaintiff had withdrawn the earlier complaints made for unauthorised construction alleged to have been by the defendant no.1. Notice of motion was made returnable on 26.7.2005.

2. Admittedly, during the pendency of this appeal, the respondent no.2-corporation has already issued a notice dated 8.9.2005 under section 351 of the Mumbai Municipal Corporation Act, 1888 and called upon the occupier of Apsara Juice Centre & Snack Bar to remove the unauthorised construction from the very suit premises. On account of this development, there is no reason to consider the prayer for ad-interim relief and it is for the Corporation to act upon the notice issued under Section 351 of the MMC Act. Hence, there is no case to entertain this appeal at this stage. The appeal is, therefore, dismissed in limine.

3. Civil Application does not survive.

(B.H.MARLAPALLE,J.)